

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

3 KICKFLIP, INC.,

4 Plaintiff,

5 v.

6 FACEBOOK, INC.,

7 Defendant.

: CIVIL ACTION

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NO. 12-1369 (LPS)

8 Wilmington, Delaware

9 Friday, June 12, 2015

10 Telephone Conference

11
12 BEFORE: HONORABLE **LEONARD P. STARK**, Chief Judge

13 APPEARANCES:

14
15 MORRIS JAMES, LLP

16 BY: KENNETH L. DORSNEY, ESQ.

17 and

18 NEWMAN DuWORS, LLP

19 BY: DEREK LINKE, ESQ.

(Seattle, Washington)

20 and

21 STRANGE & BUTLER

22 BY: BRIAN R. STRANGE, ESQ.

(Los Angeles, California)

23 Counsel for Kickflip, Inc., d/b/a
24 Gambit

25 Brian P. Gaffigan
Registered Merit Reporter

1 APPEARANCES: (Continued)

2
3 ROSS ARONSTAM & MORITZ, LLP
4 BY: BENJAMIN J. SCHLADWEILER, ESQ.

5 and

6 COVINGTON & BURLING, LLP
7 BY: THOMAS O. BARNETT, ESQ.,
8 JONATHAN GIMBLETT, ESQ., and
9 MELISSA LOU, ESQ.
10 (Washington, District of Columbia)

11 Counsel for Facebook, Inc.

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13 P R O C E E D I N G S

14 (REPORTER'S NOTE: The following telephone
15 conference was held in chambers, beginning at 3:10 p.m.)

16 THE COURT: Good afternoon, everybody. This is
17 Judge Stark. Who is there, please?

18 MR. DORSNEY: Good afternoon, Your Honor. Ken
19 Dorsney on behalf of Kickflip. With me is my co-counsel,
20 Brian Strange from Strange & Carpenter and Derek Linke from
21 Newman DuWors.

22 THE COURT: Okay.

23 MR. SCHLADWEILER: Good afternoon, Your Honor.
24 Ben Schladweiler from Ross Aronstam & Moritz on behalf of
25 Facebook, along with Jonathan Gimblett, Thomas Barnett, and
Melissa Lou from Covington.

1 THE COURT: Okay. Good afternoon to all of
2 you. I have my court reporter with me. For the record, it
3 is the case of Kickflip versus Facebook, Civil Action No.
4 12-1369-LPS. I set this time to talk about a discovery
5 dispute raised by Facebook, so let me hear first from
6 Facebook, please.

7 MR. GIMBLETT: Good afternoon. This is Jonathan
8 Gimblett for Facebook. I'll be relatively brief because we
9 have laid out the outlying in our letter of June the 8th.

10 In short, we regard the declarations that
11 Kickflip filed one week after the close of supplemental
12 briefing on summary judgment as a major development in
13 the case. Kickflip has relied now for 20 months on this
14 agreement which it represented was signed on December
15 the 15th, 2009 as a basis for its standing.

16 These declarations establish first that they
17 repeatedly misrepresented these dates of execution of that
18 agreement. Perhaps more significantly, they now admit that
19 the agreement was actually created in March 2012, in the
20 midst of a tax audit by the IRS into the 2009 tax year, as a
21 specific fact date, in order to claim a tax benefit in that
22 2009 tax year.

23 These disclosures came after we have filed our
24 supplementary reply brief, despite the fact that we had been
25 asking for, two months previously to that date, explanations

1 as to some documents that had been produced which implied
2 that the agreement wasn't in place at least as of July of
3 2010, and the complete absence of any other documentary
4 support in the record for the 2009 creation date.

5 We asked repeatedly, and this culminated in
6 e-mails we sent to Kickflip's counsel on April the 3rd, five
7 days before the filing deadline, asking specifically for
8 them to disclose any records so that we can get to the
9 bottom of that, and we never received a response to that
10 request.

11 Having now made these disclosures about the
12 events, we believe that they raise substantial questions
13 that are directly relevant to the standing question at issue
14 in this litigation.

15 One question again as to whether you can rely on
16 the December agreement to establish Kickflip standing, if,
17 as it appears, and this may well be confirmed with the
18 development of further discovery, the agreement was entered
19 into in a tortious intent and is in violation of public
20 policy and is void ab initio.

21 There are also questions that go to Kickflip's
22 and Gambit Labs understanding of the implications of the
23 November agreement, since we now know the December agreement
24 was created just seven months before this litigation was
25 instituted. Then that may well set off something about

1 Kickflip's understanding of a defect in that standing
2 flowing out of the November agreement.

3 And, finally, there are questions here that
4 may well warrant sanctions ultimately depending on what
5 discovery shows.

6 Now, the only substantive response that Kickflip
7 has made to our request, the case we made for additional
8 discovery is to argue that we, Facebook lacked standing as a
9 third party to challenge the December agreement. But this
10 way of trying to frame the question really gets it backwards
11 because what is at issue in this stage of the litigation
12 is not Facebook's standing, it's Kickflip's standing, and
13 Kickflip has the burden to showing it has standing. In
14 trying to meet that burden, it relied repeatedly on this
15 December agreement and on language within it, and it is
16 asking the Court to give effect to that language as a basis
17 for its own standing.

18 Now, if additional discovery shows that the
19 agreement was fraudulent, that it's void ab initio as this
20 country's public policy, then that means effectually the
21 agreement never came into existence and this court could
22 not rely on the December agreement to establish asserting
23 standing. In fact, that question really has nothing to
24 do with Facebook's standing to challenge the December
25 agreement. It is all about whether this agreement is valid

1 and, as such, gives them a basis to rely on it in order to
2 establish Kickflip's standing. We believe that discovery is
3 merited to answer that question.

4 THE COURT: Do you, does Facebook at this
5 question have any doubt that what you are being told
6 happened in terms of the timing of when the December 2009
7 agreement was actually drafted and how it is that you were
8 only told this date somewhat recently? Do you have any
9 doubt that that is story is the truth and that that timing
10 is the truth at this point?

11 MR. GIMBLETT: We simply don't know. All we
12 have, Your Honor, is a representation from Mr. Benizek and
13 from Mr. Smoak.

14 I have to say, two months after we first raised
15 this question in the Rule 30(b)(6) deposition of Mr. Smoak
16 on February 25th, it strikes us as strange that we can ask
17 that question repeatedly from that date on and only hear
18 this startling admission from Kickflip weeks after the close
19 of briefing on the motion.

20 THE COURT: All right. And with respect to
21 briefing, if I do grant the additional discovery you are
22 seeking, does it necessarily follow that you would want an
23 opportunity to supplement the briefs on the pending motion
24 for summary judgment?

25 MR. GIMBLETT: Yes, I think that would be a way

1 to proceed.

2 THE COURT: All right. Thank you. Let me hear
3 from Kickflip, please.

4 MR. STRANGE: Thank you, Your Honor. Brian
5 Strange for Kickflip.

6 We believe that Facebook's request for
7 additional follow-up discovery should be denied. Facebook
8 has already had the opportunity to take extensive unilateral
9 discovery, including deposing Mr. Smoak three times; twice
10 as it a deponent for Kickflip and once as a deponent for
11 Volume 11. Facebook has served three requests for
12 production of documents on the issue of standing.

13 The reason that we think that discovery is
14 neither relevant, nor necessary is that there is no dispute
15 that the December agreement was created and executed before
16 this litigation commenced and, therefore, has no impact on
17 the issue of standing.

18 The substance of the November agreement --
19 December agreement has not changed. Rather, Facebook has
20 made every attempt to challenge the validity of the
21 agreement, first for want of consideration and then failure
22 to close, among others. But the case law is clear that as
23 a third party, Facebook does not have standing to challenge
24 the validity of the agreement. That is under the *Emerson*
25 case.

1 Here, the circumstances after the discovery
2 closed, this came up about the date of this agreement. We
3 have a signed declaration from an attorney who is licensed
4 to practice who swore under oath about what happened and I
5 think explained it in detail as well as admitted that he
6 is the one that gave this information to Mr. Smoak in
7 preparation for his deposition.

8 There is absolutely no reason to challenge an
9 attorney filing a declaration under penalty of perjury about
10 what happened here. But I think the most important thing
11 is while Facebook has now come up with a novel theory that
12 perhaps the December agreement constituted tax fraud, they
13 don't have standing to make that argument because it's
14 pretty clear under the cases we have cited to, *The*
15 *Commissioner of the Internal Revenue* case, that a third
16 party does not have the right to have a Court declare a
17 legal contract void.

18 The Court won't enforce that agreement if the
19 parties are trying to enforce it. But here, you have a
20 third party trying to attack it, and under the *Emerson* case
21 and the *Commissioner of Internal Revenue* case, Facebook does
22 not have the right to make that challenge. Once we get to
23 that point, this discovery is not relevant because it is
24 undisputed that the contract was made and entered into prior
25 to this litigation being started, in fact, seven months

1 prior to it, so that this discovery would not be helpful on
2 the issue of standing.

3 THE COURT: All right. Let me ask you some
4 questions. Let's assume for the moment that Facebook
5 doesn't have standing. Why shouldn't I sua sponte want to
6 understand what happened here when, by your own admission,
7 if I'm following correctly, the testimony that was given
8 repeatedly was false? Why shouldn't I sua sponte want that
9 to be looked into?

10 MR. GIMBLETT: Well, Your Honor, I think that
11 the issue here is the date of this agreement, that is, the
12 December agreement. And I think you have a declaration, a
13 very detailed declaration from Mr. Benizek, an attorney
14 here in California, who has also appeared in your court
15 apparently, at least in the Delaware District Court, who
16 stated that he believed at all times that this declaration
17 -- or, I'm sorry, that this document was made in December
18 and didn't realize until he started looking at his billing
19 records in April that there was a mistake. And as soon as
20 he found that out, he looked further, admitted in the signed
21 declaration about what happened, and that he is the one that
22 told Mr. Smoak that it was executed in or around December
23 instead of March 2012. And he explained how that came about.

24 He has also offered to have his deposition taken
25 without the necessity of a subpoena. So it's not like he is

1 hiding everything here. He has been I think very
2 straightforward and admitted that it is his fault. So it is
3 not like it is Mr. Smoak, himself doing something. He was
4 advised by his corporate counsel, and it seems like there is
5 a sufficient explanation in the record about what happened
6 regarding the date of this document.

7 THE COURT: But, again, why shouldn't I want
8 that to be explored and tested rather than just accept it at
9 face value, particularly given what Facebook and the Court
10 were told before about this agreement?

11 MR. STRANGE: Well, Your Honor, I think it
12 depends on whether you believe that the declaration of
13 Mr. Benizek adequately explains the matter. I think if
14 it does, and since it is not really relevant to the issue
15 of standing, that you could allow perhaps open general
16 discovery because this has been allowed discovery only on
17 the issue of standing, and Your Honor could rule on the
18 pending motion for summary judgment on standing, and then
19 allow general discovery to open and perhaps allow discovery
20 during that period, if it is something of concern to the
21 Court.

22 THE COURT: You emphasize that there has been
23 extensive discovery, but discovery is intended to get to the
24 facts and the truth. And the discovery, extensive though it
25 has been, only, at least in terms of the date that this

1 agreement was executed, only got to an untruth until very
2 recently, after the briefing, as I understand it. Isn't
3 that correct?

4 MR. STRANGE: It is correct that there was
5 misstatements regarding the date of this document. There is
6 no question about it. That is, that although it was dated
7 in December, it was actually created in March of 2012. And
8 as soon as that came to light, we had these declarations
9 filed by Mr. Smoak and the attorney who was involved in it.

10 But it is correct there was a mistake here, Your
11 Honor. There is no question about it. We had Mr. Benizek
12 testify at length about it in his declaration, and he is
13 also willing to have his deposition taken.

14 I guess the question is, with respect to if Your
15 Honor believes it is important to have his deposition taken
16 and tested on his declaration, whether we need to do that
17 before ruling on the standing issue or making a ruling and
18 allowing general discovery to open in the case.

19 THE COURT: Well, then come to the void as
20 public policy argument. How could I today rule out the
21 possibility that this agreement actually is in some ways
22 part of a tax fraud and therefore potentially going to be
23 found to be void? Can I just reject that out of hand at
24 this point?

25 MR. STRANGE: Yes, Your Honor. I think that as

1 a matter of law, you can do that. Because under the *Sammons*
2 case that we cited, it cites Williston on Contracts for
3 the proposition that a third party might not have a Court
4 declare an illegal contract void. It's only enforcing the
5 contract by one of the parties. But here, there is no
6 question that assignment of an antitrust claims are allowed
7 as an assignment, and there is no question that corporations
8 can assign stock to each other, so it's not like the subject
9 matter of this contract is somehow improper in terms of the
10 assignment. So what basically it is trying to do is have
11 this declared an illegal contract and then void. I think
12 under the clear authorities on contracts that a third party
13 can't do that.

14 THE COURT: Well --

15 MR. GIMBLETT: If I may?

16 THE COURT: No, hold on. So what would be
17 wrong, Mr. Strange, with the analysis that says the burden
18 to prove standing to be in my court and to bring this
19 antitrust lawsuit is on Kickflip. The whole basis for your
20 standing as I understand it to this point has been this
21 December 2009 agreement. And if the facts were to show that
22 that December 2009 agreement was all part of a tax fraud,
23 wouldn't I, on behalf of the Court, want to know that?
24 And if that were the case, are you saying I would have no
25 discretion to say, look, this case, they failed to meet

1 their burden of standing because they're relying on a
2 document that was part of a tax fraud scheme.

3 What is wrong with that analysis? I understand
4 you're not admitting to those facts, but if that were what
5 discovery showed, what is wrong with that analysis?

6 MR. STRANGE: Well, yes. I want to make it
7 clear that this issue of tax fraud is really something that
8 is pretty far from the truth of what happened here. But
9 putting that aside for a moment, there are a few issues
10 here, Your Honor.

11 No. 1 is that the November agreement we think is
12 not an express assignment of antitrust claims. Facebook's
13 whole argument is that the November agreement is an express
14 assignment of antitrust claims and therefore those claims
15 went over to Gambit.

16 Just look at, we think we win standing just on the
17 basis of the November agreement because it is not an express
18 assignment, it doesn't say anything about legal claims or
19 causes of action, and so therefore we have standing under the
20 November agreement.

21 Then turning to the December agreement, which
22 expressly says the antitrust claims are not assigned over
23 to Gambit, even if that were invalid, which we don't think
24 it is, you still have the November agreement which allows
25 standing here.

1 But just to go back further, Your Honor, under
2 the analysis of, under the cases we have cited and bear in
3 mind that Facebook has not cite a single case in support of
4 its proposition. The cases are pretty clear that a court,
5 when looking at the issue of the validity of a contract,
6 doesn't have to have a minitrial on tax fraud. The issue is
7 whether, whether that contract assigned claims under the
8 antitrust law and a third party can't say, well, we're going
9 to challenge whether that contract is illegal or void. That
10 is exactly what happened in the *Commissioner* case that we
11 cited where the Commissioner of IRS said that the contract
12 that the taxpayer was using as a deduction was an illegal
13 contract because it involved artifacts which violated a
14 federal law on artifacts.

15 And the Court said, well, the Commissioner
16 doesn't have standing to go make that argument as being void
17 against public policy. It's only if the parties are trying
18 to enforce the contract, even if it is illegal to enforce,
19 that doesn't mean they can't rely on it for purposes of
20 getting a tax deduction.

21 The same here is that it doesn't mean we can't
22 rely on it for the purpose of whether there is an assignment
23 of antitrust claims.

24 THE COURT: All right. Thank you.

25 Let me turn back to Mr. Gimblett, if you have

1 anything you want to add.

2 MR. GIMBLETT: Well, on this question of case
3 law, let me just say that I think that the cases that
4 Kickflip has cited support the analysis that I made up
5 before. The *Emerson* case that Mr. Strange mentions
6 specifically held that a third party does not have standing
7 to challenge a contract because the contract was voidable,
8 not void. I draw that distinction between voidable and void
9 contract.

10 And avoidable contract is one in which the
11 parties to the contract have the option to declare it void
12 and that is why it makes sense for the third party wouldn't
13 have standing to challenge it.

14 A void contract, on the other hand, simply
15 doesn't exist. And as such, it is not something that can
16 be enforced by a court. And this is something that is
17 recognized in the *Sammons* case which speaks specifically,
18 has a statement that the statute prohibits an agreement
19 or sale, the result is that the Court will not then there
20 aid to any attempted enforcement of the agreement by the
21 parties.

22 So this contract being void, the issue is not
23 about whether we have got standing to challenge it. The
24 issue is all about whether you can rely on a contract that
25 is void to establish Kickflip standing.

1 THE COURT: All right. And I know there is the
2 briefing on summary judgment but address just briefly for
3 me the suggestion that maybe, maybe standing is going to be
4 established by the plaintiff entirely on the November
5 agreement and therefore it could be that I don't even have
6 to really have to worry about the December agreement.

7 MR. GIMBLETT: Right. As we explained in our
8 briefing, our original briefing on summary judgment and the
9 supplemental brief that we submitted, we think there is a
10 good argument from the language that this was an assignment
11 of all assets related to the business and the assets include
12 claims. And in addition to that, the conduct of Kickflip
13 and Gambit Labs concerns an intent to transfer those claims
14 to Gambit Labs. There was a letter in November 2009 that
15 basically asserted the claims that Kickflip seeks to assert
16 in this litigation and it did so on behalf of Gambit Labs.

17 Now, this latest submission from Kickflip that
18 the December agreement was, after all a March 2012
19 agreement, could very well bolster that argument because
20 an agreement that was entered into several months before
21 litigation was initiated may well, and we'll see if
22 discovery establishes this, may well have been worded as
23 specifically with this litigation in mind. And if that was
24 the case, the inclusion of the very convenient preamble
25 language about the intent to retain claims might well be

1 better interpreted as effectively a recognition of the
2 November agreement alone left Kickflip with a big standing
3 problem and the December agreement needed to fix that.

4 Now, if the December agreement is void and can't
5 be relied upon and the November agreement as given all of
6 this evidence we find turns out to have transferred the
7 claims to Gambit Labs, that would be a complete answer to
8 the standing issue. It would establish that Kickflip does
9 not have standing.

10 THE COURT: All right. One further question,
11 Mr. Gimblett.

12 There were I think disputes over discovery
13 previously. Can you just briefly refresh my recollection
14 on, was Kickflip trying to prevent this discovery that
15 ultimately revealed what we now know about the truth of the
16 timing of this agreement?

17 MR. GIMBLETT: So the progression here is
18 that after you denied our motion to dismiss, you ordered
19 limited -- you ordered discovery on standing. At that
20 point, backing up to the 2013, Kickflip produced this
21 December agreement and wrote to you with it basically
22 stating that there is no need for this discovery at all
23 because the December agreement answered any standing
24 questions there could be.

25 Once we go into discovery, there was an issue of

1 the inconsistency between Mr. Smoak's deposition testimony
2 where he repeatedly relied on attorney-client privilege not
3 to answer questions and the very detailed and some might say
4 legalistic declarations that he then submitted in opposition
5 to Kickflip's summary judgment.

6 You ruled, after we had briefed that back and
7 forth, that the Smoak declaration waived privilege and
8 ordered that Kickflip should produce previously withheld
9 documents relating to the November and December agreements.
10 And it was out of the production of those previously
11 withheld documents that the evidence first emerged that the
12 December agreement hadn't in fact been created and executed
13 when Kickflip had represented it was.

14 THE COURT: Thank you.

15 I know the motion has been pending for awhile
16 and there has been a number of iterations of issues related
17 to it, though it's helpful to refresh my recollection on
18 that. Thank you.

19 Mr. Strange, is there anything you want to add?

20 MR. STRANGE: Yes, Your Honor. If I could.
21 First of all, with respect to the additional discovery that
22 you ordered.

23 Not only did we comply with that discovery,
24 we actually entered a second request for production of
25 documents, separate, so that we could be forthcoming with

1 all of the discovery on this issue.

2 With respect to the void versus voidable, with
3 due respect, Facebook is just wrong about that. On the
4 *Commissioner of Internal Revenue* case, the Court said there
5 -- the Commissioner tried to say that the contract was void,
6 not voidable, and the Court said that the Commissioner's
7 reliance on Williston is misplaced. Professor Williston
8 does not suggest a third party may have a Court declare and
9 illegal contract void.

10 So the issue there, Your Honor, is there are
11 cases, and Facebook cites a case regarding, called *Feingold*
12 where the Court says, you cannot assign claims for personal
13 injury or assign claims for punitive damages and therefore
14 wouldn't allow that assignment to be valid.

15 Here, it's different in that there is no
16 question that you can assign antitrust claims. And so the
17 issue is whether can Facebook make an argument that somehow
18 the contract is illegal, which we don't think it was, but
19 even if it was, can they then say the contract is illegal
20 and therefore void? And the case we cited, the *Commissioner*
21 case I think clearly holds that they do not have standing to
22 make that argument.

23 One further point, Your Honor, is that we are
24 dealing here, as you know, with antitrust assignments. And
25 the Third Circuit under the *Gulfstream* case is very clear

1 that antitrust, if you are going to assign an antitrust
2 claim, it has to be an unambiguous assignment. The November
3 agreement is clearly not an unambiguous assignment of
4 antitrust claims.

5 The whole genesis of this argument by Facebook
6 is trying to avoid that principle because once you look
7 at that November agreement and sees it does not assign
8 antitrust claims, doesn't even say anything about legal
9 causes of action, then there is no argument by Facebook that
10 Kickflip assigned these claims and the standing issue
11 particularly on summary judgment should be denied.

12 THE COURT: All right. Thank you.

13 Mr. Gimblett, is there anything else?

14 MR. GIMBLETT: No, I think that is all for me.

15 Thank you, Your Honor.

16 THE COURT: All right. Thank you. So this is
17 a discovery dispute. I'm not ruling today on summary
18 judgment. I'm not ruling today on whether the December 2009
19 agreement, which we now know was drafted and executed in
20 March 2012, whether it's void, whether it's part of a fraud.
21 I'm not ruling on any of that.

22 I'm just faced with a request for additional
23 discovery, and I'm granting that request by Facebook. I
24 think that it is well warranted to allow the additional
25 discovery that Facebook is seeking under the very unusual

1 circumstances that are presented here. What occurred during
2 discovery and what was revealed about the actual timing of
3 the December 2009 agreement is, I agree with Facebook, a
4 startling admission.

5 Even accepting all of the representations that
6 are in the record right now, from the attorney as well as
7 Mr. Smoak, as to how this happened, nonetheless, I think
8 when you provide written sworn testimony to another party
9 in litigation and ultimately to a Court, when that sworn
10 testimony goes to at least some of the basis on which you
11 have the burden to prove standing to even be in this court
12 and maintain this lawsuit, and when that testimony turns out
13 repeatedly to be false, I don't think it is unreasonable for
14 the opposing party or indeed for the Court to want to better
15 understand what happened, how that happened, and what, if
16 any, implications there are for that as a result for whether
17 this case can and should be maintained in this court.

18 The way we go about finding out more information
19 and hopefully finding out all of the necessary facts in
20 order to make the determinations on the other issues at
21 least relating to standing is through discovery. That is
22 what Facebook proposes to do. And I think, again, that is a
23 reasonable request under the circumstances.

24 It's not entirely clear I suppose whether
25 Facebook has standing to argue that the 2009 agreement is

1 void against public policy. I don't think I have to decide
2 that issue as a legal matter today in order to find the
3 discovery sought to be relevant and reasonable.

4 I know that I have a concern about whether a
5 party should be able to prove standing to press a case in
6 this court based on a document that is part of a fraud, a
7 tax fraud. I'm not saying it was part of a tax fraud, but
8 I'm saying it's appropriate to take discovery because I'd
9 like to be more confident that it was not part of a tax
10 fraud. So the argument that Facebook lacks standing I don't
11 think wins the day for Kickflip on this discovery dispute.

12 All that said --

13 MR. STRANGE: Your Honor?

14 THE COURT: All that said -- hold on. All that
15 said, I am anxious on to get to a final decision whether
16 there is standing, but I do think that after this discovery,
17 it is appropriate to allow the parties to write some
18 additional supplemental briefs. I would like all of that
19 briefing to be done and indeed the discovery to be done as
20 quickly as possible and the briefing to be as succinct as
21 possible in light of what I have ruled today.

22 I think it is most appropriate that I give
23 you all a few days to meet and confer and propose to me a
24 specific schedule for getting this discovery done and
25 getting me back into a position where this motion is fully

1 briefed so I can determine if there is standing or not. So
2 I direct that the parties get back to me on that by next
3 Wednesday ideally with a stipulated order related to the
4 discovery and the briefing, but if you can't reach an
5 agreement, then with a short discussion of what your
6 competing proposals are.

7 That is my ruling. Are there any questions
8 about that, Mr. Gimblett?

9 MR. GIMBLETT: No questions from me, Your Honor.

10 THE COURT: All right. Mr. Strange?

11 MR. STRANGE: Your Honor, Facebook has requested
12 documents from Kickflip's current litigation counsel which
13 seems to me to be inappropriate, but do you want us to meet
14 and confer on that issue?

15 THE COURT: Yes. I mean this was not really
16 presented to me as a dispute about the specifics of the
17 discovery they were seeking. That is not how you chose to
18 contest this. That said, if you think there is something
19 left to dispute on the specifics, I would imagine that would
20 come up as you are trying to work out an order for me to
21 sign to govern this remaining discovery. And I'm always
22 available through my discovery matters process if there are
23 specific disputes that arise during the discovery that I am
24 going to order.

25 So hopefully that is enough for you to work this

1 out, but I'm not sure that that resolves your question
2 today. Is there anything else, Mr. Strange?

3 MR. STRANGE: No. Thank you, Your Honor. I
4 appreciate it.

5 THE COURT: All right. Thank you all very much.
6 Good-bye.

7 (Telephone conference ends at 3:47 p.m.)
8

9 I hereby certify the foregoing is a true and accurate
10 transcript from my stenographic notes in the proceeding.

11 /s/ Brian P. Gaffigan
12 Official Court Reporter
13 U.S. District Court
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